

To: Ferrell, Mark[Ferrell.Mark@epa.gov]
From: Mark Ferrell
Sent: Wed 1/22/2014 11:36:16 PM
Subject: 1-22 clip update

CDC now says pregnant women should have been warned sooner
<http://www.wvgazette.com/News/201401220039>

Everyone asking for answers about PPH
<http://www.wvgazette.com/News/201401220031>

WV tells Freedom it has until 4pm to come clean
<http://www.charlestondailyemail.com/News/201401220033>
<http://tinyurl.com/ktknpxn>

Govs storage tank bill criticized
<http://www.charlestondailyemail.com/News/statehouse/201401210204>

West Virginia American Water press release - updates on sampling and test results
<http://www.amwater.com/files/PR27SamplingandTestResults.pdf>

Spill poses new test for WV lawmakers
<http://tinyurl.com/mn9e56t>

Water Resources hearing
<http://tinyurl.com/mrln9qc>

WV Rivers Coalition and Downstream Strategies issues joint report on spill
<http://www.charlestondailyemail.com/News/statehouse/201401200106>

The

Report: <http://www.wvrivers.org/news/wvriverscoalitionreleaseswaterprotectionrecommendations>

Week 2 – Rules, Rules, Rules

All of the DEP “rules” were introduced in both the House and the Senate late last week.

So it’s time for my annual legislative tutorial about “rules.” Here we go.

The Legislature passes laws (or statutes), and then they pass rules (or regulations).

Generally speaking, the laws or statutes set out the broad guidelines for government actions, and the rules set out the specific details or regulations. Generally speaking, the laws establish the authority for the government to act and create an agency to implement the action. Generally speaking, the agency then develops (or “promulgates”) the individual rules needed to enforce the laws.

Agency rules are not proposed by individual legislators. They are developed annually by the specific agency and are then presented to the Legislative Rule-Making Review Committee during the Interim sessions.

Usually, the Legislative Rule-Making Review Committee then simply approves the rules and passes them on for consideration by the full Legislature during the regular session.

There are normally more than a hundred of these rules. If you look at the legislative web site, you will see a long list of bills introduced in both the House and the Senate with titles like, "Authorizing Commissioner of Agriculture promulgate legislative rule relating to shellfish" (that was an actual rule title a couple of years ago).

Each agency files its rules with the Secretary of State's office, and that's where you have to go to get an early look at them (but only if you know the correct section of the state's legal codes to look under). However, more recently you can also find them on the specific agency web site. And this year, for the first time, the legislative web site has provided a link to each of the filed rules.

To make matters worse, when these agency rules are introduced they are assigned both a House bill number and a Senate bill number, and these are different than the numbers used by the Rule-Making Review Committee.

And then they are assigned to committees in both houses. And this year they will likely be run first in committees on the Senate side. They will then be "bundled" and sent as a group – ***under a new bill number*** – to the House. It really is quite confusing!

But that's not all.

West Virginia is one of the few states that allow the Legislature to actually "promulgate" agency rules. Most state legislatures, and even the U.S. Congress, can only vote a rule up or down. They cannot change or re-write the rule.

However, in West Virginia lawmakers can change any part of a proposed agency rule. In the extreme, they can even do a "strike and insert" and replace the entire rule with one more friendly to industry.

It is the ultimate politicization of the rule-making process. It's not a particularly citizen-friendly arrangement. And industry always gets the last bite at the apple.

What happened three years ago is a good example: under pressure from industry, the Legislature gutted DEP's proposed Water Quality Standards Rule (47CSR2).

The result was that several water quality standards that DEP knew were important to protect human health and the environment were simply removed from the rule.

So what agency rules are we concerned about this year?

Our primary concern again this year is (SB 136), the Triennial Review of State Water Quality Standards. This rule change, proposed by the WV Department of Environmental Protection's Division of Water and Waste Management, requires the calculation of aluminum criteria based on the "hardness" of the stream. The new rule would significantly weaken current protections, as compared to the existing rule. The revisions are drastic and equate to greater than a 13-fold and 46-fold increase over the current criteria for acute and chronic aluminum toxicity to aquatic life respectively.

The only justification given by DEP for this rule change is that the costs of water treatment under the current rule are too burdensome for the coal industry.

The proposed rule fails to protect the aquatic life designated use in West Virginia's rivers and streams, an invaluable resource to the State. And it fails to protect the public's interest, rather than the interests of a small number of polluters.

In the Senate the rule will first be considered by the Natural Resources Committee, next week on Wednesday, Jan. 22. So it's time to contact your Senators and ask them to oppose the new aluminum standard as proposed in this rule.

That's the legislative "rules" tutorial for this year.

Remember to keep your bird feeders full this week. It's the "rule."

To reach members of the Senate Natural Resources Committee:

Senate Majority Leader Unger and Senate President Kessler have introduced S.B. 373 which, among other things, initiates a regulatory program for above-ground storage tanks. We feel good about this bill, although we would like to see additional specificity regarding regular inspections of these tanks, and will work to fine-tune the bill as it moves through the legislative process.

No doubt we'll see more bills elicited by the crisis as the session proceeds, and it will be interesting to see what legislation emanates from the Governor's office. One of our friends opined that "it will be a loophole with a bill drafted around it by the time his lawyers are done." Gosh, we hope not! J

Finally, on Friday morning the Joint Legislative Oversight Commission on Water Resources heard two presentations pertaining to the crisis. Dr. Paul Ziemkiewicz, Director of the West Virginia Water Research Institute, provided additional information about the culprit chemical, MCHM. Most notably, he told the Commission that MCHM is classified as an oil, and as such it falls under 40 CFR 112, which pertains to oil pollution prevention. This regulation requires a spill prevention, control and countermeasure plan, a secondary containment structure, inspections, testing and recordkeeping. Then Brian Stanley, who is Director of Marketing for the International Union of Painters and Allied Trades, informed the committee about the importance of competent application of proper coatings to storage tanks.

(manchin)

NYT <http://tinyurl.com/msrw96g>

(washingtin in=gnoring spill)
WaPo <http://tinyurl.com/n73jxvp>

The Elk River chemical spill that left 300,000 West Virginians without safe water roused strong public demand for tougher policing of polluters. But some observers fear that Mountain State politicians will revert to their old habit of defending industries and attacking pollution controls.

A long Sunday *New York Times* analysis said Sen. Joe Manchin, D-W.Va., continued "preaching a familiar gospel of an industry under siege by overzealous regulators," even after the chemical nightmare in his home state. Manchin sided with chemical and coal interests at a Washington industrial assembly six days after the Elk outrage.

The national newspaper noted that Manchin earns "nearly \$1.5 million a year from his coal brokerage firm," and his first Senate speech "called for the repeal of a Clean Water Act regulation on mountaintop mining."

Manchin soon will play a key role in revising the federal Toxic Substances Control Act. The *Times* expressed apprehension that he will be swayed by "West Virginia's record of deferring to industry."

In the column below, national writer Eugene Robinson says of West Virginia leaders:

"The bipartisan consensus in the state seems to be: Move along folks, nothing to see here. Sen. Joe Manchin, a Democrat, told CNN that he is 'not going to cast guilt on anybody' and defended the coal industry. Rep. Shelley Moore Capito, a Republican, told the [Charleston] Gazette she still believes the Environmental Protection Agency is guilty of 'overreaching.'"

In Washington, Manchin is sponsoring what the *Times* called "modest legislation to regulate storage facilities like the Elk River tank farm that are close to waterways."

In Charleston, Gov. Tomblin likewise is asking the 2014 Legislature to pass a plan for limited policing of chemical tanks. As reporter Ken Ward Jr. pointed out Tuesday, Tomblin's bill wouldn't require state inspections of tank farms, but would let company-hired engineers declare that the tanks are safe.

In contrast, the U.S. Chemical Safety Board repeatedly urged West Virginia to adopt an "audit" system in which outside health and safety experts visit each facility yearly to pinpoint any potential dangers.

The nine-county water contamination -- caused by a dilapidated tank farm with a convicted felon among listed owners -- was a bitter jolt to West Virginia. Families and businesses suffered. School students lost more than a week of learning. About 400 residents went to hospitals. A flood of lawsuits began. The offending firm filed bankruptcy to avoid responsibility.

Current public anger demands that elected officials make a genuine crackdown on such industrial affronts. There should be no retreat.